

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ORIGINAL

ARY Jewelers, LLC., )  
Plaintiff, )  
 )  
v. ) CIVIL ACTION NO. 04-CV-10281 EFH  
 )  
IBJTC Business Credit Corp. and )  
David Molinario, )  
Defendants. )

**PLAINTIFF ARY JEWELERS, LLC.**  
**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

TO THE UNITED STATES DISTRICT COURT:

Plaintiff ARY Jewelers, LLC. ("ARY") files this Motion for Leave file Second Amended Complaint in Intervention.

I.

**INTRODUCTION AND BACKGROUND**

1. This case involves various torts committed by Defendants when they conveyed arguably adverse information about their potential customer, ARY, to one of their competitors, Foothill Capital Corp. Based on Defendants' act, Foothill withdrew a favorable lending proposal and substituted it with a much less favorable proposal. Such action prevented ARY from acquiring a chain of jewelry stores it had intended to purchase, Krigel's, Inc. and caused ARY damages.
2. ARY has sued Defendants for tortious interference with a prospective relationship and breach of confidential/fiduciary duty.
3. The fact discovery deadline expired on June 15, 2005 and Plaintiffs recently received and

provided expert witness reports. Two of those reports were from experts in the field of banking. Conclusions reached by these expert witnesses, that Defendants violated banking standards and practices in communicating the information to Foothill, has prompted ARY to desire to amend its complaint to include two additional causes of action – violations of Massachusetts General Law Chp. 93A and breach of an implied contract of confidentiality. These causes of action are set forth more fully in Plaintiff's Second Amended Complaint, which is attached hereto and incorporated herein.

4. Leave of court to amend a party's pleadings shall be freely given when justice so requires. Fed. R. Civ. Proc. 15(a); *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962). "In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc. –, the leave should, as the rules require, be 'freely given'." *Id.*

5. There are no apparent or declared reasons for denying ARY's leave to amend. Rather, justice requires amendment of ARY's Complaint so that it can include all allegations and claims against Defendants. Any changes to the pleading do not alter the nature of the trial so this amendment would not prejudice Defendants.

6. ARY acknowledges that the timing of this request may, at first blush, seem suspect since there is now pending before the Court Defendants' Motion for Summary Judgment. However, Defendants filed this motion well before the deadline set forth in the scheduling order requiring motions for summary judgment to be filed no later than February 8, 2006. Given the foregoing deadlines, that the discovery deadline just recently expired, and the parties have yet to engage in expert witness discovery (other than ARY providing its expert witness reports), ARY is timely

making this request.

WHEREFORE, Plaintiff asks that this Motion be granted.

Dated: *September 14, 2005* August \_\_\_\_, 2005 Respectfully submitted,

THE CARRIGAN LAW FIRM, L.L.P.

By:

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**CERTIFICATE OF CONFERENCE**

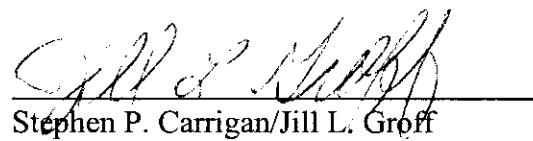
Pursuant to Local Rule 7.1(A)(2), counsel for Plaintiff conferred with counsel for Defendants and the same opposes the relief requested in the foregoing motion.

*Stephen P. Carrigan/Jill L. Groff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was forwarded as indicated below by certified mail, facsimile and/or hand delivery, return receipt requested in accordance with the Federal Rules of Civil Procedure on this 14th day of September, 2005.

Robert S. Fischler  
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\_\_\_\_\_  
Stephen P. Carrigan/Jill L. Groff

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**ORDER GRANTING MOTION FOR LEAVE  
TO FILE SECOND AMENDED COMPLAINT**

ON THIS the \_\_\_\_\_ day of \_\_\_\_\_, 2005, this Court considered ARY Jewelers, LLC.'s Motion for Leave to File Second Amended Complaint After consideration of the same, the Court is of the opinion that said motion should be GRANTED.

It is, therefore, ORDERED that ARY's Motion for Leave to File Second Amended Complaint is GRANTED and that ARY's shall be filed as of the date of this Order.

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UNITED STATES DISTRICT JUDGE

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 2005.